VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

REVIEW AND REGULATION LIST **VCAT REFERENCE NO. Z511/2019**

CATCHWORDS

Review and Regulation List – *Health Practitioner Regulation National Law Act 2009*, sections 5, 107, 130, 196(1), (2) and (4) – criminal convictions, failure to give timely notice to the Nursing and Midwifery Board of Australia that charges had been laid – giving misleading information about criminal history when applying for re-registration – agreed position as to findings of fact and of professional misconduct – whether open to make a disqualification order and a prohibition order under section 196(4) – applications for orders under the *Open Courts Act 2013* (Vic) – reprimand and prohibition orders made.

APPLICANT	Nursing and Midwifery Board of Australia
RESPONDENT	Ibtisam Abdulkadir
WHERE HELD	Melbourne
BEFORE	A Dea, Senior Member M Bylhouwer, Member R Pearson, Member
HEARING TYPE	Hearing via video conference
DATE OF HEARING	22 October 2020 and 3 December 2020
DATE OF FINAL SUBMISSIONS	10 December 2020
DATE OF ORDER AND REASONS	22 December 2020
CITATION	Nursing and Midwifery Board of Australia v Abdulkadir (Review and Regulation) [2020] VCAT 1446

ORDERS UNDER THE *HEALTH PRACTITIONER REGULATION NATIONAL LAW (VICTORIA) ACT 2009* (VIC)

1 Under section 196(2)(a) of the *Health Practitioner Regulation National Law (Victoria) Act 2009* (National Law), the respondent is reprimanded.

2 Under section 196(4)(b) of the National Law, for a period of two years from the date of these orders, the respondent is prohibited from providing, whether as employee, contractor, manager or volunteer, any health service (including, but not limited to, health services as a Personal Care Attendant) involving provision of care to persons in residential aged care, or receiving home or community based aged care or disability care.

ORDERS UNDER THE *OPEN COURTS ACT 2013* (VIC)

3 Under section 17 of the *Open Courts Act 2013* (Vic):

(a) Any report of the whole or part of these proceedings or information derived from this proceeding that might enable the resident and any other third parties (including the notifiers) to be identified must not be published or otherwise disclosed.

(b) This order applies throughout Australia on the basis that the Tribunal's reasons for decision for final orders are published on AustLII and that website may be accessed throughout Australia. The privacy of the people referred to in order 3(a) would be breached if persons living outside Victoria know or come to know their identity.

(c) This order operates until the later of the death of all of the people referred to in order 3(a).

4 The respondent's application for a suppression order under the *Open Courts Act 2013* (Vic) is refused.

A Dea	M Bylhouwer	R Pearson
Senior Member and Presiding Member	**Health Practitioner Member**	**Health Practitioner Member**

APPEARANCES:

For Applicant	Ms C Dwyer, counsel, by video conference
For Respondent	In person, by telephone

REASONS

1 Ms Ibtisam Abdulkadir was first registered by the Nursing and Midwifery Board of Australia (Board) as an enrolled nurse on 28 February 2017.

2 At the time she applied for registration, Ms Abdulkadir was working as a personal care attendant (PCA) at an aged care home (Home). She commenced working on 30 December 2016 and her employment was terminated on 1 March 2017.

3 On around 31 January 2017, Ms Abdulkadir came across a credit card belonging to a resident of the Home (the resident). There was a dispute about whether she found the card outside the Home on the nature strip and was unaware the cardholder was a resident or whether she gained access while caring for the cardholder. There was no dispute that she took a photograph of the card and then made use of it for her own benefit.

4 Between 31 January 2017 and 21 February 2017, Ms Abdulkadir made or attempted to make a number of transactions using the card.

5 The Home management was alerted to the transactions, Victoria Police was notified and, on 1 March 2017, Ms Abdulkadir's employment was terminated.

6 Criminal charges were laid against Ms Abdulkadir on 18 March, 29 May and 13 August 2017. The charges came before the Magistrates' Court of Victoria on 19 October 2017. Ms Abdulkadir pleaded guilty to three charges. No conviction was recorded but she was fined $2,000.

7 Victoria Police gave notice of the charges to the Australian Health Practitioner Regulation Agency (AHPRA) and, in due course, under its powers in the *Health Practitioner Regulation National Law (Victoria) Act 2009* (Vic) (National Law), the Board decided to investigate and then refer the matter to this Tribunal on 21 March 2019. The referral was received on 25 June 2019.

8 In the Notice of Allegations attached to the referral, the Board alleged that Ms Abdulkadir's conduct arising from the charges and findings of guilt amounted to professional misconduct. It also alleged she engaged in professional misconduct when she failed to give notice of the charges as required by the National Law and by misleading the Board when she applied for renewal of her registration without disclosing the criminal charges.

9 By the time of the second hearing day, the parties had signed an Agreed Statement of Facts, Findings and Proposed Determinations (Agreed Statement). By doing so, Ms Abdulkadir agreed she had engaged in the conduct contained in the Notice of Allegations and that the conduct constituted professional misconduct under the National Law.

10 The parties did not, though, agree on the determinations the Tribunal should make.

11 The Board sought determinations that Ms Abdulkadir be:

(a) Reprimanded;

(b) Disqualified from applying for registration as a registered or enrolled nurse for a period of two years from the date of the Tribunal's decision; and

(c) Prohibited from providing specified health services for a period of two years from the Tribunal's decision.

12 While Ms Abdulkadir agreed to a reprimand being imposed, she did not agree with the other two proposed determinations.

13 After hearing from the parties and considering the materials before us, we have decided to impose a reprimand and prohibit Ms Abdulkadir from providing certain health services for a period of two years.

THE HEARING

14 In the lead up to the hearing, Ms Abdulkadir had not been participating in the proceeding. Orders were made to ensure she had been served with all relevant documents and was aware of the procedural steps and hearing dates. Ms Abdulkadir made no contact with the Tribunal or the Board's solicitors for many months.

15 The final hearing was listed to proceed on 22 October 2020 by video conference and Ms Abdulkadir attended. Apparently, she had contacted the Board's solicitors the day before to explain she had moved, had a new email address and that she would be attending. It appeared that, although the various documents mentioned above had been delivered to Ms Abdulkadir's family home, they had only reached her a day or so before the first hearing day. Ms Abdulkadir told us that, as at the date of that hearing, she was living in emergency accommodation.

16 Despite all of that, Ms Abdulkadir had read all the documents and indicated she agreed she had engaged in the conduct described and agreed she had engaged in professional misconduct. She further indicated that she objected to the Board's proposed determinations and its use of material which post-dated the conduct referred to in the allegations.

17 We decided to adjourn the hearing and list the proceeding for a compulsory conference before another Member. That is the usual step taken before the final hearing in proceedings of this kind. As Ms Abdulkadir had come into the proceedings late and was not legally represented, we considered that an appropriate way for the parties to discuss which matters were agreed and which were not.

18 Also at the hearing on 22 October 2020, we confirmed with the parties that the hearing would resume at 2pm on 3 December 2020, being a date convenient to all participants.

19 The compulsory conference was listed for 28 October 2020. Ms Abdulkadir sent an email the day before saying she could not attend as she was unwell. She did not supply a medical certificate. In her email, she objected to the Board's proposed determinations and she attached a document containing her position as to a range of matters.

20 The compulsory conference was adjourned to 16 November 2020 to allow Ms Abdulkadir a final opportunity to participate. She did not attend. Orders were then made confirming the video conference hearing would proceed at 2pm on 3 December 2020. As mentioned, the Agreed Statement was before us that day.

21 The hearing proceeded as scheduled with Ms Abdulkadir attending the video conference using her telephone (and not a video connection).

THE ALLEGATIONS AND MS ABDULKADIR'S ADMISSIONS

22 Allegation 1 is that the Board alleged that Ms Abdulkadir engaged in:

(a) professional misconduct within the meaning of the definition of professional misconduct in paragraph (a) and/or (b) and/or (c) of section 5 of the National Law;

and/or

(b) unprofessional conduct within the meaning of the definition of unprofessional conduct in section 5 of the National Law;

in that, on or about 19 October 2017, Ms Abdulkadir was found guilty in the Magistrates' Court of Victoria of three criminal charges under the *Crimes Act 1958* (Vic) (Crimes Act).

23 The particulars of Allegation 1 read as follows:

(i) at all material times, Ms Abdulkadir was a registered nurse;

(ii) on or about 19 October 2017, Ms Abdulkadir plead guilty to three criminal charges under the Crimes Act which arose from conduct she engaged in whist employed at [the Home], specifically:

(A) *'the accused at Chadstone, between Tuesday 31 January 2017 and Tuesday 21 February 2017, dishonestly obtained for herself a financial advantage, namely payment of school fees for $3005, by deception namely the unauthorised use of [the resident's] credit card'*, in contravention of section 82(1) of the Crimes Act;

(B) *'the accused at Chadstone, on Tuesday 7 February 2017, did by deception dishonestly obtain property, namely AHPRA membership belonging to AHPRA and valued at $170, with the intention of permanently depriving AHPRA of the said membership'*, in contravention of section 81(1) of the Crimes Act; and

(C) *'the accused at Chadstone, between Monday 13 February 2017 and Saturday 4 March 2017, did attempt to commit an indictable offence, namely obtain property by deception. The accused did by deception, using fraudulently obtained credit card details, dishonestly attempt to obtain property online, namely 2 pairs of wireless headphones, an iPhone 7 plus mobile phone and food supplements belonging to Myers and Crazy Bulks UK, and valued at $3,704.47, with the intention of permanently depriving [the resident] of the money'*, in contravention of section 321M of the Crimes Act;

(iii) the findings of guilt are conduct that is inconsistent with Ms Abdulkadir being a fit and proper person to hold registration in the nursing profession;

(iv) *'Code of Professional Conduct for Nurses in Australia'* (7 May 2013 - 28 February 2018) provides that:

(A) Conduct Statement 3 - Nurses practise and conduct themselves in accordance with laws relevant to the profession and practice of nursing

(I) 1 - Nurses are familiar with relevant laws and ensure they do not engage in clinical or other practices prohibited by such laws or delegate to others activities prohibited by those laws;

(II) 2 - Nurses respect the possessions and property of persons people in their care and those of their colleagues, and are stewards of the resources of their employing organisations;

(B) Conduct Statement 9 - Nurses maintain and build on the community's trust and confidence in the nursing profession

(I) 1 - The conduct of nurses maintains and builds public trust and confidence in the profession at all times;

(II) 2 - The unlawful and unethical actions of nurses in their personal lives risk adversely affecting both their own and the profession's good reputation and standing in the eyes of the public. If the good standing of either individual nurses or the profession were to diminish, this might jeopardise the inherent trust between the nursing profession and the public necessary for effective therapeutic relationships and the effective delivery of nursing care.

24 As set out in the particulars, Ms Abdulkadir used the resident's credit card to pay off fees associated with her nursing diploma and to pay for her registration with the Board (via AHPRA). She also used the credit card to attempt to purchase items of a personal nature as listed. The transactions were not successful because the resident's wife had become aware of the others and cancelled the card.

25 Allegation 2 is that Ms Abdulkadir engaged in:

(a) professional misconduct within the meaning of the definition of professional misconduct in paragraph (a) and/or (b) and/or (c) of section 5 of the National Law;

and/or

(b) unprofessional conduct within the meaning of the definition of unprofessional conduct in section 5 of the National Law;

in that:

(a) on or about 18 March 2017;

(b) on or about 29 May 2017;

(c) on or about 13 August 2017; and

(d) on or about 19 October 2017;

Ms Abdulkadir contravened section 130(1) of the National Law by failing to give the Board notice within seven days that a relevant event occurred.

26 The particulars for Allegation 2 are as follows:

(i) at all material times, Ms Abdulkadir was a registered nurse;

(ii) on or about 18 March 2017, Ms Abdulkadir was charged with:

(A) Obtaining Financial Advantage by Deception, in contravention of section 82(1) of the Crimes Act (Charge 1); and

(B) Obtaining Property by Deception, in contravention of section 81(1) of the Crimes Act (Charge 2);

(iii) on or about 29 May 2017, Ms Abdulkadir was charged with:

(A) Obtaining Financial Advantage by Deception, in contravention of section 82(1) of the Crimes Act (Charge 3);

(B) Obtaining Property by Deception, in contravention of section s 1(1) of the Crimes Act (Charge 4);

(C) Attempting to Obtain Property by Deception, in contravention of section 321M of the Crimes Act (Charge 5); and

(D) Theft, in contravention of section 74 of the Crimes Act (Charge 6);

(iv) on or about 13 August 2017, Ms Abdulkadir was charged with:

(A) Fail to Answer Bail, in contravention of section 30(1) of the Bail Act 1997 (Vic) (Charge 7);

(v) each of the charges referred to in (ii) to (iv) above are criminal offences punishable by 12 months' imprisonment or more;

(vi) Ms Abdulkadir failed to notify the Board within 7 days of being charged with each of the criminal offences referred to in (ii) to (iv) above;

(vii) on or about 19 October 2017, Ms Abdulkadir was found guilty of Charge 1, Charge 2 and Charge 5;

(viii) Ms Abdulkadir failed to notify the Board within 7 days of being found guilty of Charge 1, Charge 2 and Charge 5.

27 Allegation 3 is that Ms Abdulkadir engaged in:

(a) professional misconduct within the meaning of the definition of professional misconduct in paragraph (a) and/or (b) and/or (c) of section 5 of the National Law;

and/or

(b) unprofessional conduct within the meaning of the definition of unprofessional conduct in section 5 of the National Law

in that, on and around 30 June 2017, Ms Abdulkadir made false and/or misleading declarations in the course of applying to the Board for her renewal of registration.

28 The particulars for Allegation 3 are:

(i) at all material times, Ms Abdulkadir was a registered nurse;

(ii) on or about 30 June 2017, Ms Abdulkadir completed and submitted to AHPRA an application for renewal of her registration;

(iii) pursuant to section 107 of the National Law, the application referred to in (ii) above was accompanied by an annual statement in the terms of section 109 of the National Law;

(iv) the annual statements referred to in (iii) above included the following question:

Since your last declaration to AHPRA, has there been any change to your criminal history in Australia that you have not declared to AHPRA?

(v) Ms Abdulkadir answered *No* to the question referred to in (iv) above;

(vi) Ms Abdulkadir's answer at (v) above was false and/or misleading in that, between 18 March 2017 and 29 May 2017, Ms Abdulkadir was charged with six criminal offences under the Crimes Act.

MS ABDULKADIR'S REGISTRATION STATUS

29 Relevant to our consideration of the Allegations was Ms Abdulkadir's registration status at various times.

30 In summary:

- Between 31 January and 21 February 2017, Ms Abdulkadir made six transactions using the resident's credit card. At that time, she was working as a PCA but was not registered by the Board;
- On 7 February 2017, Ms Abdulkadir completed an application to be registered as an enrolled nurse;
- Between 13 February and 20 February 2017, Ms Abdulkadir attempted to make three further transactions using the resident's credit card;
- On 28 February 2017, Ms Abdulkadir was registered by the Board – her registration was current for the period up to and including 31 May 2017;
- On 3 March 2017, Ms Abdulkadir attempted to make one further transaction using the resident's credit card;

- On 30 June 2017, Ms Abdulkadir applied online to renew her registration; and
- On 21 December 2017, Ms Abdulkadir's renewal application was refused by the Board.

31 Ms Abdulkadir remained registered in the period 1 June 2017 to 21 December 2017 because, under section 108(1) of the National Law, once an application to renew registration is made, the applicant's registration is taken to continue in force until either a new certificate of registration is issued or notification of a decision to refuse registration is provided to the applicant.

32 As mentioned earlier, Ms Abdulkadir's employment at the Home was terminated on 1 March 2017. Although she was registered as a nurse from then until 21 December 2017, she gave evidence she did not work as a nurse in that period and nor did she work as a PCA.

33 So, although the use of the credit card which led to the criminal charges occurred before Ms Abdulkadir was registered, the charges and those findings post-dated her registration.

THE AGREED STATEMENT AND MS ABDULKADIR'S ADMISSIONS

34 By signing the Agreed Statement, Ms Abdulkadir admitted she engaged in the conduct particularised in Allegations 1, 2 and 3. She also admitted that the conduct constituted professional misconduct within the meaning of paragraphs (a) and (b) and (c) of the definition of professional misconduct contained in section 5 of the National Law.

35 At the hearing before us on 3 December 2020, Ms Abdulkadir confirmed she agreed to those matters.

FINDINGS OF FACT

36 Noting Ms Abdulkadir's admissions and the material before us to the charges laid against her, the findings of guilt and her interactions (or lack thereof) with the Board, we were comfortably satisfied the factual basis for each of Allegation 1, 2 and 3 was made out.

37 Other factual matters relevant to determinations are discussed later.

CHARACTERISATION OF THE CONDUCT – THE NATIONAL LAW

38 As set out above, the parties agreed Ms Abdulkadir's conduct as described on each occasion amounted to professional misconduct.

39 The National Law defines *'professional misconduct'*, in the context of a registered health practitioner, as including:

> (a) unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably

expected of a registered health practitioner of an equivalent level of training or experience; and

(b) more than one instance of unprofessional conduct that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience; and

(c) conduct of the practitioner, whether occurring in connection with the practice of the health practitioner's profession or not, that is inconsistent with the practitioner being a fit and proper person to hold registration in the profession.

40 Relevantly, the National Law defines *'unprofessional conduct'* as

> professional conduct that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioner's professional peers and includes—
>
> (a) a contravention by the practitioner of this Law, whether or not the practitioner has been prosecuted for, or convicted of, an offence in relation to the contravention; and
>
> …
>
> (c) the conviction of the practitioner for an offence under another Act, the nature of which may affect the practitioner's suitability to continue to practise the profession . . .

41 The Tribunal has power to make findings about conduct under section 196(1)(b) of the National Law.

42 Paragraph (a) of the definition of professional misconduct concerns unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected of a registered health practitioner of an equivalent level of training or experience.

43 Paragraph (b) of the definition captures repeated instances of unprofessional conduct.

44 Paragraph (c) of the definition concerns conduct which is inconsistent with the practitioner being a fit and proper person to hold registration in the profession. The concept of *'fit and proper'* is well known – it goes to matters of character and moral rectitude.

ALLEGATION 1

45 We had no difficulty concluding that the findings of guilt represented a serious departure from the standards reasonably expected of a registered health practitioner of an equivalent level of training or experience. The fact Ms Abdulkadir had only just completed her training and become registered does not assist her as the offences represent dishonesty of a kind which ought not to be displayed by any person, not to mention a member of the nursing profession.

46 We were satisfied the findings of guilt and the conduct that led to those findings was not consistent with Ms Abdulkadir being a fit and proper person. The use of someone else's credit card to pay for nursing related education costs and her registration fees alone was entirely inconsistent with a proper respect for the profession and the regulator.

47 We found the conduct fell within the meaning of professional misconduct as defined in paragraphs (a) and (c).

ALLEGATION 2

48 Relevantly, section 130(1) of the National Law says:

> A registered health practitioner or student must, within 7 days after becoming aware that a relevant event has occurred in relation to the practitioner or student, give the National Board established for the practitioner's or student's health profession written notice of the event.

49 Section 130(3)(i) and (ii) provide that a relevant event means the practitioner is charged with an offence punishable by 12 months imprisonment or more; or is convicted of or the subject of a finding of guilt for an offence, punishable by imprisonment. We accept the offences with which Ms Abdulkadir was charged and those of them she was found guilty of, fall within that definition.

50 We were satisfied Ms Abdulkadir's failure to notify the Board of the criminal charges as required by section 130 of the National Law constituted unprofessional conduct within subsection (a) of the definition of the term *'unprofessional conduct'* which refers to breaches of the National Law.

51 It is well understood that section 130 of the National Law is an important part of the regulatory regime and that it assists the relevant professional Board to take steps to protect the public and maintain professional standards. The registration regime contained in the National Law, which focusses on the protection of the public, relies on honest prompt reporting of matters such as those.

52 We found that Ms Abdulkadir engaged in conduct which was of a lesser standard than that which might reasonably be expected of her by the public and her professional peers and so that conduct fell within the definition of unprofessional conduct. That was because all registered health practitioners are expected to understand and comply with their legal obligations.

53 The fact Ms Abdulkadir repeatedly failed to report the charges to the Board means the conduct fell within paragraph (c) of the definition of professional misconduct.

ALLEGATION 3

54 Relevantly, section 109 of the National Law provides:

> An application for renewal of registration must include or be accompanied by a statement that includes the following —

. . .

(b) details of any change in the applicant's criminal history that occurred during the applicant's preceding period of registration;

55 The term *'criminal history'* is defined to mean (our emphasis):

(a) every conviction of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;

(b) *every plea of guilty or finding of guilt by a court of the person for an offence*, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law and whether or not a conviction is recorded for the offence;

(c) *every charge made against the person for an offence*, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law.

56 In undertaking its role of protecting the public, the Board relies on registered nurses making declarations as to a number of matters about their professional and, in this case, statutory obligations. It is clear that the Board relies on the truthfulness and accuracy of declarations as it would not be practicable for it to undertake an audit-like process for each. All people are expected to apply diligence and care when completing declarations.

57 As set out in the particulars, on 30 June 2017, Ms Abdulkadir answered *'No'* to this question:

> Since your last declaration to AHPRA, has there been any change to your criminal history in Australia that you have not declared to AHPRA?

58 As at the date she gave that answer, Ms Abdulkadir had been charged with six criminal offices. By that date she had also been interviewed by the police twice and had been given paperwork showing she had been bailed. Those criminal processes ought to have been in the front of her mind when she completed the declaration and so, by completing the renewal so as to indicate there was no matter to report, Ms Abdulkadir must have been aware she was misleading the Board.

59 Having regard to those facts and Ms Abdulkadir's admissions, we were satisfied that the conduct described in Allegation 3 constituted professional misconduct under paragraphs (a) and (c) of the definition.

60 The conduct was clearly substantially short of that expected of registered nurses and is not consistent with being a fit and proper person.

DETERMINATIONS – THE TRIBUNAL'S POWERS AND THE BOARD'S SUBMISSIONS

THE TRIBUNAL'S POWERS AND THEIR PURPOSE

61 Section 196(2) of the National Law sets out the determinations the Tribunal may make where professional misconduct or unprofessional conduct has been proven. They include cancellation of registration, suspension of registration and the imposition of conditions.

62 Section 196(4) says (our emphasis):

> If the tribunal decides to cancel a person's registration under this Law or the person does not hold registration under this Law, the tribunal may also decide to —
>
> *(a)* disqualify the person from applying for registration as a registered health practitioner for a specified period; *or*
>
> (b) prohibit the person, either permanently or for a stated period, from —
>
> (i) providing any health service or a specified health service; or
>
> (ii) using any title or a specified title.

63 The Tribunal's primary role is to protect the public rather than to punish health practitioners who engage in professional misconduct or unprofessional conduct. Having said that, determinations may involve a degree of punishment for the purpose of general deterrence (to warn others in the profession against such misconduct) and specific deterrence (to deter the individual in question from repeating the misconduct).[1]

64 It is well understood that:[2]

- The purpose of the imposition of determinations is to protect the public;
- Determinations are intended to maintain proper ethical and professional standards for the protection of the public and also for the protection of the profession in the sense of maintaining stature and integrity in the eyes of the public;
- Personal matters such as shame, personal ordeal, and financial difficulty are of little relevance save insofar as they contribute to the specific deterrence of the practitioner;
- The likelihood of recidivism, or, put another way, an assessment of the ongoing risk posed by the practitioner, should be central to the imposition of a determination;

1*Pharmacy Board of Australia v Lee* [2017] VCAT 87 at paragraph 61.
2As summarised in *Medical Board of Australia and Pharmacy Board of Australia v Lee* [2019] VCAT 311 at paragraph 20.

- The degree to which the practitioner has acquired insight into his or her conduct is relevant to the assessment of the continuing risk posed by the practitioner;
- Insight can include an understanding of the nature of the conduct, an acceptance that the conduct was wrong, an appreciation of why the practitioner engaged in that conduct, empathy with the consequences, and/or a willingness to take measures to identify risk factors and to do that which is necessary to avoid further transgressions; and
- Any form of official censure is of consequence. A reprimand is a serious matter for a professional person and should not be considered a *'slap over the wrist'*.

THE BOARD'S SUBMISSIONS ON DETERMINATIONS

65 The Board submitted the appropriate determinations in this matter were as follows:

(a) that Ms Abdulkadir be reprimanded pursuant to section 196(2)(a) of the National Law;

(b) that Ms Abdulkadir be disqualified from applying for registration as a nurse for a period of two years from the date of the Tribunal's decision, pursuant to section 196(4)(a) of the National Law; and

(c) that Ms Abdulkadir be prohibited from providing specified health services for a period of two years from the Tribunal's decision (pursuant to section 196(4)(b)(i) of the National Law).

66 The Board's submissions as to the disqualification and prohibition determinations relied on the following matters:

- Ms Abdulkadir's conduct was extremely serious and she had brought the profession into disrepute by effectively stealing significant sums from a resident on numerous occasions and over time. Further, she was said to have then sought to avoid responsibility for that conduct by failing to comply with notification obligations and making a misleading statement to the Board in the course of re-applying for her nursing registration. The determinations sought would send a clear message to Ms Abdulkadir, other nurse practitioners and the community at large that this conduct will not be tolerated;
- Ms Abdulkadir's pattern of dishonesty:
    - First, in relation to the repetitive use of credit card details which had been stolen, and which belonged to a patient who, although perhaps not directly under her care, was nonetheless a resident at the care facility at which she worked;
    - Second, in relation to her lack of candour with the Board in failing to make notifications and failing to disclose her criminal history; and

- Third, Ms Abdulkadir's alleged conduct in respect of her entitlement to graduate from a Bachelor of Nursing;

- The absence of evidence before the Tribunal of attempts at rehabilitation by Ms Abdulkadir. It was submitted that her earlier expressions of remorse and insight came after initial denials to the Board's investigators and Victoria Police, and were *'now of little value given her recent conduct'*.

67 The *'recent conduct'* related to a notification made by the School of Nursing, Midwifery and Paramedicine at Australian Catholic University (ACU). That notification alleged that Ms Abdulkadir has been involved in subsequent acts of dishonesty in the context of her studies / the profession.

68 The Board submitted that the Tribunal should take into account at the determinations stage of the proceeding, that Ms Abdulkadir had allegedly engaged in a course of conduct which included making false written and oral statements in an attempt to either graduate or attend a graduation ceremony for a Bachelor of Nursing, when in fact her enrolment in the course had been terminated on the basis that she had failed multiple units.

69 This alleged conduct was, in the Board's view, central to the Tribunal's assessment of the need to protect the public, including the need for specific deterrence, the degree of insight and the ongoing risk posed by Ms Abdulkadir.

70 The ACU material included allegations Ms Abdulkadir had:

- Made a false and misleading statement to ACU staff during a phone call on about 4 April 2019, to the effect that she had received a course completion email and a graduation registration email;

- Created and used false and misleading documents, namely a graduation confirmation email and graduation tickets provided to another student in around April 2019; and

- Created and used a false and misleading document, namely a course completion email provided to ACU staff and the Academic Registrar on 18 April 2019.

71 The Board contended it was particularly concerning that the ACU related incident was directly connected to the profession, and the alleged conduct occurred during the period that these proceedings were before the Tribunal.

72 The Board submitted that, like the fraudulent payment of her Board registration, Ms Abdulkadir's alleged conduct demonstrated a concerning lack of insight into the appropriate standards of the profession and her ethical obligations. Further, it contended the ACU related events demonstrated a failure to learn from the allegations the subject of the present proceeding and an entrenched reliance on deceptive conduct. That was said to be fundamentally inconsistent with being a fit and proper person for registration and could only lead to a conclusion that Ms Abdulkadir is an

ongoing risk to the public and has acted inconsistently with the community's expectations of the profession. As such, the Board submitted that the need to protect the public, and specific deterrence, demanded a substantial period out of practice.

73 The Board also submitted that, in order to protect the public, including to send a clear message to the profession and public at large that the conduct the subject of the allegations will not be tolerated, and in order to deter Ms Abdulkadir and account for the high risk of future misconduct, two years out of practice from the date of the Tribunal's decision was required.

74 Given that Ms Abdulkadir was working as a PCA at the time she obtained the resident's credit card details and used them fraudulently, the Board submitted that it was appropriate that Ms Abdulkadir be both disqualified from applying for registration and from providing a health service involving the provision of care to vulnerable people. It was submitted that it is appropriate for the Board to seek a prohibition order in this case because, although she is no longer registered, Ms Abdulkadir was still capable of obtaining employment as a PCA.

MS ABDULKADIR'S EVIDENCE AND SUBMISSIONS ON DETERMINATIONS

75 Ms Abdulkadir agreed to the Tribunal ordering that she be reprimanded, however, she submitted it was not appropriate for any other determinations to be made under section 196 of the National Law.

76 In addition to asking us to consider the content of a letter sent to the Tribunal on 28 October 2020, Ms Abdulkadir gave evidence at the hearing before us about the facts described in the Allegations and as to the ACU material. She also gave evidence about her current circumstances and why she contended the Tribunal should not make either a disqualification or prohibition order and that, if one of those was to be made, she preferred it to be a disqualification order.

77 As we understood it, the evidence was not given to take issue with the findings of fact made but to give context to events and the matters relied on by the Board and we have treated it as such.

78 We mentioned earlier Ms Abdulkadir's two interviews with police. During the first, Ms Abdulkadir denied all allegations. At the hearing, she explained she went home and spoke with her family who told her she must return and tell the truth to police. She returned to the police station the same day and made a further statement.[3] In the course of that further statement, Ms Abdulkadir admitted making some, but not all, transactions or attempted transactions.

79 At the Magistrates' Court, the case stopped and started while the prosecutor clarified which charges were and were not proceeding and those to which Ms Abdulkadir pleaded guilty. She and the prosecutor went in and out of

3Tribunal Book, pages 61 to 121.

the court room for those discussions. In due course, they returned and Ms Abdulkadir pleaded guilty to Charges 1, 2 and 5.[4] Those are the charges reflected in the particulars to Allegation 1 and 2.

80 At the hearing, Ms Abdulkadir disputed the proposition that she used the resident's credit card over a period of around six weeks – she asserted all the transactions were made over the weekend after she came across the card. When her attention was drawn to the series of attempted transactions between 13 February and 4 March 2017, she claimed they had all been made at the same time but showed at different dates because they had been attempts which the relevant businesses tried to process over time. Eventually she agreed that she had pleaded guilty to the charge that covered those dates and that by admitting the conduct in Allegation 1, she had accepted those were the dates of the attempted transactions.

81 As to the transactions relating to her diploma expenses and registration fees, Ms Abdulkadir gave evidence she was under pressure from her family to complete her studies, obtain her diploma and commence nursing. She said she used the credit card because she felt pressured and also wanted to make them proud.

82 Ms Abdulkadir disputed the claim she had obtained the resident's credit card details by accessing his wallet and photographing the card. She maintained she found it on the nature strip outside the Home and that, after taking the photograph on her phone, she left it there. She also maintained that she did not know the card belonged to a resident of the Home. While she knew who the resident was, the name she knew him by was different to that on the card and so she did not connect the two.

83 Ms Abdulkadir maintained that evidence in the face of material in the Tribunal Book, to the effect that the resident's wife became aware of the transactions on 24 February 2017 and found the credit card in her husband's wallet at that time. On that day, the transactions were reported to the resident's bank and the card was cancelled.[5] Ms Abdulkadir also maintained that position despite the absence of any evidence the card was missing or had been returned to the resident after being found outside. Ms Abdulkadir's evidence confirmed she was aware of who the resident was but she maintained she never provided care to him as he was in receipt of low care whereas she worked only in high care.

84 On the question of the ACU material, Ms Abdulkadir denied fabricating emails or any document. Ms Abdulkadir also stated she was overseas with her parents and younger sister at the time the emails arrived and she had called on another sister to contact ACU on her behalf and that may have affected the communications with ACU.

4Tribunal Book, pages 201 to 220.
5Tribunal Book, pages 144 and 152.

85 As to whether she was qualified to graduate, Ms Abdulkadir explained that she had been questioning ACU about whether certain placements she had completed were to be credited to her total course points such that she had accrued sufficient points. While she had not had a specific response to that matter, she gave evidence before us that she assumed when she received an email inviting her to the graduation, that the question had been resolved in her favour and so she qualified for graduation. Ms Abdulkadir maintained that explanation even when the Tribunal suggested she must have known she was not then entitled to graduate.

86 As to Allegation 3, at the hearing before us, Ms Abdulkadir gave evidence she misunderstood the nature of the criminal charges and their status and thought they were not formal or official until they went to hearing before the Magistrates' Court. Ms Abdulkadir did not give that evidence to step back from the admissions but rather to show the breaches were not deliberate. In her letter to the Tribunal sent on 28 October 2020, she put it this way:

> It was not of malicious intent nor was it out of negligence and or lack of truth to the board. When I was asked, 'Since your last declaration to Ahpra, has there been any change to your criminal history in Australia that you have not declared to [AHPRA]?' I hesitated in answering no, Because I hadn't understood the circumstance I was in myself at the time. After my court date, the magistrate had decided that because I had never had a criminal charge against me nor have I ever got In any trouble, that he would record as a non-conviction because I was young and most likely wouldn't offend again. I was informed conviction doesn't have to be recorded when you receive a good behaviour order, a fine, or a correction order. Any penalty more serious than this must have a conviction recorded.

87 As to Allegation 2, Ms Abdulkadir said, by the time of the Magistrates' Court hearing in August 2017, there had been a notification as to her conduct to the Board and she had spoken to AHPRA representatives about that. As we understood it, Ms Abdulkadir was suggesting that the Board was, therefore, aware of what had occurred

88 In her 28 October 2020 letter to the Tribunal, Ms Abdulkadir covered a range of other matters as summarised by us below:

- She confirmed she understood she had engaged in unprofessional conduct substantially below the standard reasonably expected of a nurse. She also confirmed she was aware the Tribunal's role is not to punish individuals, although its decisions may involve some degree of punishment. She referred to the Tribunal's role including to protect the public and the profession's reputation;
- She said she knew her actions and conduct constituted a *'really big'* breach of trust and it undermined the community's confidence in the nursing profession and breached fundamental ethical standards in nursing;

- She said she had disgraced herself and completely gone against her own cultural and religious standards. She said that, ever since the time *'this incident'* had occurred, she had *'held my head [in] shame and could not bear to bring myself to sit at a table amongst my friends and family. I felt as if I let a lot of people down including all individuals that I had sworn to protect with my honour and career'*;
- She referred to the difficulties with living as a *'covered Muslim girl'* and growing up in a strict household where both parents worked extremely hard to look after their home and their seven children;
- She explained she had worked tirelessly to convince her parents to allow her to study nursing and her *'vow to commit to making my family and the community proud with my achievements'*; and
- She further explained, once the criminal processes took place, she had moved from her family and friends and had *'been on the run since'*. She expressed regret for the pain caused to her family and for having *'tarnished'* their name. She referred to suffering financially and not having stable housing since she left her family home. Reference was made to health scares and impacts to her well-being over the last 12 months.

89 Ms Abdulkadir said she had reflected on her *'mistakes'* and *'the choices'* she made over the past and how she had suffered poor mental health due to her isolation.

90 She referred to efforts towards rehabilitation including helping others through the Somali Australian Business and Professionals Incorporated (SABPI). She referred to helping guide young graduates or anyone find careers and assisting to organise networking events. She referred to working with social workers to help troubled Somali community members. She said that, at the end of 2020, just after she had recovered from an ankle fracture, she went back to Somalia on a medical mission *'so that I could assist with cataract surgeries performed by money we had raised here in Australia'*.

91 We pause to record that, given the COVID-19 pandemic, that travel could not have happened in late 2020 and do not know whether she intended to refer to 2019.

92 Ms Abdulkadir ended her letter confirming she was aware people expected a high level of professional ethics and morality from nurses who deal with public health and safety and that she had let a lot of people down. She asked that, as *'a first-time offender and a self-represented individual'*, we take her efforts of rehabilitation into consideration when considering determinations.

93 The Tribunal Book contained copies of references which were apparently placed before the Magistrates' Court. They included one from an old friend

and fellow nurse.[6] She expressed great surprise at Ms Abdulkadir's conduct. She explained Ms Abdulkadir had told her what had been done and expressed great remorse. The referee said the conduct was out of character and she believed it was a *'one-off'*.

94 The Chairman of SABPI wrote a letter on 18 May 2018 addressed *'Dear Sir/Madam'*.[7] The letter confirmed Ms Abdulkadir held the role of secretary and had been involved in SABPI's activities. It gave an impressive endorsement of Ms Abdulkadir's voluntary work within the organisation listing all the work she had done over time. While we accept Ms Abdulkadir's evidence about her involvement with SABPI, as the reference was not directed to the Tribunal and did not indicate the author was aware of the criminal findings of guilt or the subject matter of these proceedings, we give it only very limited weight.

95 Ms Abdulkadir gave evidence she had not worked as a PCA or in any other health setting since about March 2017 when she lost her job at the Home. She had worked in family day care working as a field worker. As a result of the COVID-19 pandemic, that work had ceased but she had qualified for the JobKeeper program. She did not expect to be able to return to her old role as she did not believe there would be enough work and her employer had other field workers already.

96 Ms Abdulkadir said she wanted to work in disability services in the community and, for that reason, if she could not work again as a nurse in the shorter term, she preferred that a prohibition order not be made.

97 As summarised above, Ms Abdulkadir moved out of her family home and was living in emergency housing for a time. As at the time of the hearing, she was in shared accommodation awaiting public or community based housing. Ms Abdulkadir also said she would like to return home to live but we understood that was not a current prospect.

98 Ms Abdulkadir made reference to health conditions that had affected her earlier participation in the proceedings. We did not have any medical evidence about the nature of those conditions but Ms Abdulkadir told us she was able to proceed with the hearing on 3 December 2020.

99 From all of that evidence, we understand Ms Abdulkadir's housing circumstances are now uncertain and she is somewhat vulnerable. We accept that her path to qualification and registration may have been difficult due to her family circumstances.

100 Consistent with the content of her letter, at the hearing, Ms Abdulkadir expressed remorse for her actions and also pointed to the three years she had been unable to work as a nurse. While Ms Abdulkadir accepted a harsh outcome was appropriate given her conduct, she contended she had, in effect, served her time.

6Tribunal Book, page 228.
7Tribunal Book, page 250.

OUR CONSIDERATION OF THE EVIDENCE

101 The Magistrates' Court made no finding as to the exact circumstances by which Ms Abdulkadir obtained the resident's credit card details except that it was accepted she never took possession of the card itself. Given the evidence that the card was in the resident's wallet as at 24 February 2017, was never reported missing and was not handed in having been found outside, we have grave reservations about Ms Abdulkadir's account.

102 Even had she found it outside, an honest person would have taken steps to hand it in somewhere so it could have been returned to its owner. The obvious place to hand it in would have been the Home or at a police station. We infer that Ms Abdulkadir risked another person taking the card and using it dishonestly because, had she handed it in, she would have been connected to the card and so rendered unable to make use of the card details she had photographed. That suggests to us she intended to make use of those from the moment she picked up the credit card.

103 As indicated earlier, we accept Ms Abdulkadir's family circumstances have added to the challenges of completing her education and joining the profession. However, they cannot excuse her dishonesty in the context of that profession and otherwise.

104 In her evidence, Ms Abdulkadir confirmed she would have undertaken ethics units of study as part of her diploma in 2016. While Ms Abdulkadir has expressed remorse, she repeatedly referred to her use of the resident's credit card, including for expenses associated with nursing, as *'a mistake'* and as occurring in the context of a wish to make her parents proud. She also referred to financial pressures at the time. Those explanations fall well short of an appreciation of the expectation of honesty and reliability held by the profession and the community more generally.

105 The attempted purchase of personal items (as summarised in particular (ii) (C) of Allegation 1) could not have been said to be related to making her parents proud or otherwise being connected with financial pressures relating to her studies.

106 The materials before us show that, when attempting to make the purchases of wireless headphones, an iPhone and food supplements, Ms Abdulkadir used a false name, email address and delivery address.[8] The delivery address was a newsagent in a suburb near where Ms Abdulkadir then lived.[9] We noted that the transaction which was the subject of a withdrawn charge

8Tribunal Book, page 154.
9Ms Abdulkadir obtained a letter from the proprietor of that newsagent dated 19 October 2017. The letter said that a parcel (unidentified) was not received by him. We have assumed that concerned an item relating to one of the withdrawn charges. See Tribunal Book, page 230.

was made using the same false name, email address and the same newsagent's delivery address.[10]

107 We found the level of organisation displayed by Ms Abdulkadir in respect of the attempted purchases described in particular (ii)(C) of Allegation 1 concerning. The false details showed Ms Abdulkadir was well aware the attempted transactions were fraudulent, and she hoped not to be caught. Ms Abdulkadir did not specifically address those matters at the hearing or in the written material submitted to the Magistrates' Court or this Tribunal – rather, she seemed to consider them as all part of what she described as her *'foolish mistake'*.

108 As to the ACU events, the Board submitted that they were relevant to Ms Abdulkadir's professions of insight, rehabilitation and remorse. The Board invited the Tribunal to use the material to assess whether Ms Abdulkadir had discharged the burden on her with respect to establishing reformation. We proceed on that basis.

109 We have not made any specific findings of fact regarding the detail of Ms Abdulkadir's conduct at ACU as that conduct post-dated that detailed in the Allegations and was not formally before us. We limit our comments to the following.

110 Despite her denials as to the fabrication of documents and a meeting about the issue with the Dean, we noted that the ACU did not withdraw its allegations that Ms Abdulkadir had fabricated emails and given misleading information related to her entitlement to graduate.

111 The ACU documents contained allegations that Ms Abdulkadir accessed someone else's email accounts as part of the fabrication of relevant documents. We found that allegation very troubling.

112 As to Ms Abdulkadir's evidence that she thought the email she says she received indicated the ACU had agreed to give her credits for certain placements and so she qualified to graduate, we noted the following. The materials show that the ACU wrote to Ms Abdulkadir on 7 December 2018 advising that her enrolment had been terminated due to her failing a placement. The email Ms Abdulkadir said she received saying she was *'Course Complete'* and would be invited to a graduation ceremony, was sent three days later without any reference to the previous letter or any suggestion that the decision to terminate her enrolment had been overturned.

113 It seemed rather surprising to us that Ms Abdulkadir proceeded on the basis that the previous decision had been overturned without express notice to her. If the email about being course complete and the upcoming graduation was genuine, we would have expected her to question whether there had been an error and make enquiries. That is particularly so given the nature of the Allegations in these proceedings which were on foot at the time.

10Charge 4, Tribunal Book, page 154.

114 We have taken account of Ms Abdulkadir's evidence about why she did not comply with her notice obligations (as set out in Allegation 2) and why she answered *'No'* as to her criminal history (in the context of Allegation 3).

115 We could not help but notice also that, as contained in the particulars to Allegation 2 and as admitted by Ms Abdulkadir, she failed to report the charges of findings of guilt to the Board. There is no suggestion the information she was given at the Magistrates' Court covered her obligations to the Board.

116 We give very limited weight to what Ms Abdulkadir said about why she answered *'No'* to the question about criminal history when renewing her registration in June 2017 – as stated earlier and as illustrated by her own letter to the Tribunal, at the time Ms Abdulkadir hesitated about the answer to give and, in our view, she knew it to be misleading at best and false at worst.

117 We have sympathy for the challenges Ms Abdulkadir has faced, including lacking family support at times and we are aware the COVID-19 pandemic has added to those challenges. However, considering the available material as a whole, we have limited confidence in Ms Abdulkadir's expressions of remorse for her conduct as opposed to how those events affected her. We cannot help but agree with the Board's submissions that her conduct reveals a pattern of dishonesty and a lack of insight.

118 We now turn to the determinations to be made under the National Law.

REPRIMAND

119 As set out above, the parties agreed that it was appropriate for Ms Abdulkadir to be reprimanded for the conduct contained in Allegations 1, 2 and 3. We agreed.

DISQUALIFICATION OR PROHIBITION ORDER?

SUBMISSIONS

120 In circumstances where Ms Abdulkadir was no longer registered, the Board sought determinations that she be disqualified from applying for re-registration for two years *and* also that she be prohibited from working in other health services settings.

121 As set out above, Ms Abdulkadir contended that *neither* determination ought to be made given the relevant events had happened three years ago and, as set out above, she was extremely remorseful and she had taken steps to rehabilitate already.

122 After the hearing, the parties had leave to make further submissions about the possibility that only a disqualification or prohibition order was to be made.

123 If both determinations were not to be made, the Board expressed a preference for a prohibition order to be made and sought an amendment to the form of words that had been included in the Agreed Statement. The revised terms of the order sought were as follows (underlining indicates the amendment):

> Ms Abdulkadir be prohibited from providing, whether as employee, contractor, manager or volunteer, any health service (including, but not limited to health services as a Registered Nurse, an Enrolled Nurse or a Personal Care Attendant) involving provision of care to persons in residential aged care, or receiving home or community based aged care or disability care, for a period of 2 years from the Tribunal's decision (pursuant to section 196(4)(b)(i) of the National Law).[11]

124 Ms Abdulkadir sent the Tribunal a letter by email on 9 December 2020. It comprised two parts. The first seemed directed to the Board and contained criticisms of the investigation process and the way she was cross-examined at the hearing. Ms Abdulkadir referred to shortcomings in AHPRA's investigation, including when she provided information and was then told weeks or months later, that another response was required. She also said she felt ill at the hearing but attended as she did not want to miss it. She described the Board's counsel as being dismissive and accusing her of events that had not happened.

125 The letter then had a heading addressed to the Tribunal members and it said this:

> The board's position is that both disqualification and a prohibition order may be ordered by the Tribunal.
>
> In relation to section 196(2), only a reprimand can be ordered in circumstances where a practitioner is not registered.
>
> I understand that very much and would like to ask for caution or a reprimand. That neither a prohibition nor a disqualification be placed on my name or record. I ask that you kindly re-visit the decision as I've never been involved [in] any criminal act, I have made a mistake and I have learnt from this.

126 The Board responded to Ms Abdulkadir's statements regarding delay. It is not necessary to canvass those now.[12]

127 The first question for consideration is whether the Tribunal has the power to make both determinations.

THE TRIBUNAL'S POWERS UNDER SECTION 196(4) OF THE NATIONAL LAW

128 Section 196(4) of the National Law says:

11 Email sent on 7 December 2020.
12 Email sent on 10 December 2020.

If the tribunal decides to cancel a person's registration under this Law or the person does not hold registration under this Law, the tribunal may also decide to —

(a) disqualify the person from applying for registration as a registered health practitioner for a specified period; or

(b) prohibit the person, either permanently or for a stated period, from —

(i) providing any health service or a specified health service; or

(ii) using any title or a specified title.

SUBMISSIONS AND EARLIER DECISIONS

129 The Board contended that, notwithstanding the word *'or'* at the end of subsection (a), it is open to read that word as meaning *'and'* and so make both determinations. In support of that position it referred us to two decisions under the National Law and the authorities they relied on.

130 The first case relied on was the Queensland Civil and Administrative Tribunal's decision in the decision in *Psychology Board of Australia v King*.[13] At paragraphs 104 to 113, the Tribunal:

- Noted that, *'Ordinarily it might be thought the use of the word "or" limits the Tribunal to making either a disqualification order or a prohibition order, but not both. If that course were adopted it would have the obvious practical consequence in this case that the practitioner, if disqualified from applying for registration, would continue to practice as a counsellor, or if prohibited from practising as a [counsellor] would be entitled to re-apply for registration at any time'*;
- Referred to passages from *Green v Premier Glynrhonwy Slate Co Ltd*,[14] and *BP Australia Ltd v South Australia*,[15] to the effect that there were occasions where it was open to read the word *'or'* as *'and'*;
- Said that to determine the question of whether *'or'* meant *'and'* in section 194(4), it was necessary to consider the purpose and object of the National Law. It identified those as including:
  - The protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered;
  - The guiding principles of the scheme, as stated in section 3, which include a requirement for restrictions on the practice of a health profession to be imposed, but *'only if it is necessary to ensure*

13[2016] QCAT 140.
14[1928] 1 KB 561.
15(1982) 31 SASR 178.

the health services are provided safely and are of an appropriate quality';

- The main principle for administering the National Law is that the health and safety of the public is paramount; and
- Section 4 which provides that an entity with functions under this law are to exercise its functions having regard to the objectives and guiding principles of the national registration scheme; and

- Relied on section 7 of Schedule 7 of the Act which provides that in the interpretation of a provision of the National Law, the interpretation that will best achieve the purpose or object of the law is to be preferred to any other interpretation.

131 The Tribunal concluded that, construing section 196(4) in the context of the purpose and object of the National Law, compelled a conclusion that the word *'or'* should be read as *'and'*, with the result that the Tribunal is empowered to both disqualify and prohibit.

132 In *Nursing and Midwifery Board of Australia v Kumar*,[16] the parties agreed it was open to the Tribunal to make both disqualification and prohibition orders. The Tribunal referred to and relied on the reasoning in *King* and also gave weight to the same provisions of the National Law.

133 We noted that, in *Dental Board of Australia v Dhillon*,[17] a disqualification order was made, as was an order prohibiting the practitioner from using the honorific *'Dr'* or providing any health service until he was re-registered. There was no discussion of the word *'or'* either at the end of section 196(4)(a) or within section 196(4)(b).

134 There has been at least one differing view within this Tribunal: in *Dental Board of Australia v BYX*,[18] a differently constituted Tribunal took the view that, once a cancellation order had been made, there was no power to make a prohibition order.

135 The fact of the differing views has been noted in other decisions where it was not necessary to resolve the question.[19]

DISCUSSION AND DECISION

136 While acknowledging the well-founded reasons based on policy and protective purposes for imposing prohibition orders, it is first necessary to determine whether it is open to interpret the word *'or'* in section 196(4) as *'and'* in the fact of an application for a disqualification and prohibition order.

16[2019] VCAT 1099 at paragraph 96.
17[2018] WASAT 107 at paragraph 29.
18[2019] VCAT 1739 at paragraph 38.
19*Psychology Board of Australia v Asher (No 2)* [2019] VCAT 1957 at paragraph 129; and *Medical Board of Australia v Lee* [2020] VCAT 568 at paragraph 107.

137 The correct approach to statutory interpretation is well known and was the subject of the High Court of Australia's decision in *Project Blue Sky v Australian Broadcasting Authority*.[20] The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The meaning of a provision must be determined by reference to the language of the instrument viewed as a whole. The process of construction must always begin by examining the context of the provision that is being construed. It is to be assumed that legislative provisions are intended to give effect to harmonious goals. A court or tribunal construing a statutory provision must strive to give meaning to every word of the provision.

138 Starting with the terms of section 196 itself, it is apparent that the legislature had at its disposal words or phrases other than *'or'*. It includes the following (underlining our emphasis):

> (1) After hearing a matter about a registered health practitioner, a responsible tribunal may decide —
>
> (a) the practitioner has no case to answer and no further action is to be taken in relation to the matter; <u>or</u>
>
> (b) <u>one or more of the following</u> —
>
> . . . or
>
> (2) If a responsible tribunal makes a decision referred to in subsection (1)(b), the tribunal may decide to <u>do one or more of the following</u> —
>
> . . .
>
> (3) If the responsible tribunal decides to impose a condition on the practitioner's registration, the tribunal <u>must also</u> decide a review period for the condition.

139 Section 196(4) itself is very like sections 194(2) and (3) and it also includes the phrase *'may also decide to'*.

140 On its face, it appears that *'or'* instead of *'and'* or *'one or more of the following'* was inserted between subsections (a) and (b) and within (b) deliberately.

141 Is there any provision within the National Law that suggests the correct reading is *'and'*?

142 We agree with the Board's submissions as to the purposes of the National Law and its protective nature. It is apparent that, as discussed in *Kumar*, some work in health services does not require any form of professional registration and so the work of section 196(4)(b) is to ensure practitioners who are not registered and not otherwise subject to regulatory oversight cannot cause harm or mislead the public. None of those matters is inconsistent with reading *'or'* as *'or'*. There is no provision in the National

20[1998] HCA 28 at paragraphs 69 to 70.

Law which says or suggests disqualification and prohibition are tools intended to be used together.

143 We have considered the decisions relied on in *King* as the rationale for the conclusion reached. While in each, the Court decided to read *'or'* as *'and'*, in our view, the provisions in issue are not analogous to section 196(4). To show that to be true, it is not necessary to detail all of the contentions before the Court – the provisions themselves and the following passages are sufficient to show why the interpretative path was found to be open and the kind of mischief the interpretation sought to remedy.

144 The provision in issue in *Green v Premier Glynrhonwy Slate Co Ltd*,[21] was section 8 of the *Workmen's Compensation Act 1925* (UK). The case concerned the respective entitlements of Mr Green's wife who was totally dependent, a step-daughter aged 16 who was partially dependent and a two younger sons who were totally dependent.

145 Section 8 said relevantly:

> (1) The compensation under this Act where death results from the injury shall be a lump sum of an amount calculated in accordance with the rules hereinafter contained, together with, if the workman leaves a widow or other member of his family (not being a child under the age of fifteen) wholly or partially dependent upon his earnings, and in addition leaves one or more children under the age of fifteen so dependent, an additional sum (hereinafter referred to as the children's allowance) of an amount calculated in accordance with the rules hereinafter contained, so, however, that the lump sum and children's allowance (which shall be added together and dealt with as a single sum) shall not in any case exceed in the aggregate six hundred pounds.
>
> . . .
>
> (3) The amount of the children's allowance shall be calculated in accordance with the following rules:—
>
> (i) If both the widow or other member of the workman's family and such child or children as aforesaid, were all wholly dependent on the workman's earnings, the children's allowance shall in respect of each such child be a sum equal to fifteen per cent of the amount arrived at by multiplying the average weekly earnings of the workman, or where such earnings are less than one pound, then by multiplying one pound, or where such earnings exceed two pounds then by multiplying two pounds, by the number of weeks in the period between the death of the workman and the date when the child will attain the age of fifteen, fractions of a week being disregarded;

21[1928] 1 KB 561.

(ii) If the widow or other member of the workman's family and such child or children as aforesaid, or any of them, were partially dependent on the workman's earnings, the children's allowance shall be such proportion of the sum which would have been payable under the foregoing rule if all such persons had been wholly dependent as may be agreed upon or in default of agreement as may, taking into consideration the amount of the lump sum, be determined by arbitration under this Act to be reasonable . . .

146 At the commencement of his reasons, Lord Justice Scrutton said this (italics our emphasis):

> This is a puzzling section, and I regret that we have not had the advantage of any statement by the county court judge of the reasons for his judgment. I can only endeavour to construe this section by the words used in it, *but if I am asked whether I have arrived at the meaning of the words which Parliament intended I say frankly I have not the slightest idea*.

147 Lord Justice Sargant said this:

> The question here is as to how the children's allowance is to be calculated under the Workmen's Compensation Act, 1925. I do not myself feel much doubt as to what the words in the section mean, my only difficulty is in myself expressing in words what is the alternative view of the two views which I think ought to be adopted . . .

148 In *BP Australia Ltd v South Australia*,[22] the South Australian Supreme Court considered sections 4 and 15a of the S*hop Trading Hours Act 1977-1980* (SA) which dealt with what constituted a *'shop'* and how a convenience store with petrol pumps (and underground storage) was to be classified.

149 Wells J described the issue in this way (italics our emphasis):[23]

> The definition of 'shop', which is directed (inter alia) to fixing a shop's measurable limits, warrants close scrutiny. *The definition presents an irritating difficulty at the outset*; ex facie, the wording suggests that the several *res* recited in the opening passage are to be read as mutually exclusive alternatives. *So understood, the definition would mean that a shop comprising two or more of those res could not be a single shop; but that conclusion seems so clearly contrary to common experience that a resolution of the impasse ought to be attempted*.

150 When describing the interpretative task, Wells J said this (italics our emphasis):[24]

> *I confess that a not inconsiderable part of the argument in this case left me puzzled.* Of course, Parliaments, constituted as they are by

22(1982) 31 SASR 178.
23At 189.
24At 179, 190 and 191.

> ordinary human beings, may, from time to time, produce a strangely worded statute-even the legendary skills of Parliamentary Counsel may momentarily succumb to the extraordinary pressures of long hours and late sittings. *Occasionally courts find themselves, in unexpected circumstances, obliged to strain the language of an Act in the interests of consistency or in order to avoid repugnancy or absurdity*.
>
> . . .
>
> *Given that the absurdity of the foregoing literal, grammatical, construction imperatively demands that a search be made for a clearer understanding*, it is possible to achieve three solutions: a purely verbal solution; a solution that draws its strength from the so-called golden rule of interpretation; and a solution that rests in the reported authorities dealing with statutory instruments and contexts in which 'or' ought to, and may fairly, be read as 'and'.
>
> . . .
>
> I am of the clear opinion that principle and authority not only authorize, but compel, the reader to bring the construction of the definition into line with what common sense would immediately suggest . . .

151 With those comments in mind, we now return to section 196(4) of the National Law.

152 The effect of a disqualification order under section 196(4)(a) means the practitioner cannot immediately re-apply for registration. The provision does not provide for permanent disqualification but rather only for a specified time. That indicates that re-registration is intended to be an option.

153 Of course, re-registration may only be achieved through an application being made to the relevant Board and it deciding, not only that the practitioner has the requisite qualifications (including recency of practice), but also that they are fit and proper for registration in the relevant profession.[25] The fact the Tribunal may specify a time after which an application for registration may be made does not guarantee it will be granted – that is entirely a matter for the relevant Board. In this way, the Board as an expert regulator may determine whether, at the time of application, the practitioner ought to be able to re-enter the profession.

154 Section 196(4)(b)(i) is directed at a different situation – what the practitioner does while not registered. As we apprehend it, in effect, it grants the Tribunal some jurisdiction over the unregistered person in order to further the objects and purposes directed at protection of the public by ensuring the person does not provide any or specified *'health services'*.

25 See Divisions 1 and 6 of Part 7 of the National Law and section 55 in particular as to when an individual may be unsuitable for registration.

155 The definition of *'health services'* includes *'services provided by registered health practitioners'* which indicates that a prohibition order ensures that an unregistered person does not provide services of the kind which are subject to the registration processes under the National Law. The definition also covers a wide range of other services including: hospital services; mental health services; community health services; and welfare services necessary to implement any of those services.

156 Section 196A provides that it is an offence to contravene a prohibition order subject to a maximum penalty of $60,000 or three years imprisonment or both.

157 Unlike the disqualification power, a prohibition order may be made for a specified period or permanently.

158 Unlike the provisions considered in the above cases, we are not persuaded the plain words of section 196(4)(b)(i) are absurd or cannot operate in a logical fashion. In our view, the provisions can be read harmoniously as they provide a range of ways practitioners who are not registered (because their registration has been cancelled or otherwise) can be limited.

159 For these reasons, we are not persuaded section 196(4) of the National Law is a provision which warrants the word *'or'* being read as *'and'*. Accordingly, we must determine whether it is appropriate to determine to make a disqualification order or a prohibition order.

PROHIBITION ORDER

160 We consider the objectives and protective purposes of the National Law as to the practice of the nursing profession may be addressed through the Board determining whether to grant an application for registration. Given those powers and the fact Ms Abdulkadir has not expressed an immediate intention to return to nursing, but rather has a focus on health services in the community, the need for a disqualification order in this case is of lesser importance. Of course, because the definition of health services includes *'services provided by registered health practitioners'*, while a prohibition order is in force, Ms Abdulkadir could not provide such services even if registered.

161 We have set out above our concerns about Ms Abdulkadir's insight into her past conduct and recent events which indicate she has continued to display a lack of appropriate candour and honesty. We read with concern, Ms

Part 8 of the *Health Complaints Act 2016* (Vic) gives the Health Complaints Commissioner power to make interim and final prohibition orders and otherwise regulate the provision of *'general health services'*. The definition of that term is *'a health service that is not a health profession service'*. The Act provides that *'a health profession means a health profession within the meaning of the National Law'* and that *'health profession service means the practice of a health profession'*. The definition of *'health profession'* in the National Law includes *'midwifery'* and *'nursing'* (see section 5).

Abdulkadir's last communication in which she asserted that she had *'never been involved [in] any criminal act, I have made a mistake and I have learnt from this.'* Her actions which led to the Magistrates' Court findings of guilt were criminal acts. As discussed, her conduct included a level of organisation apparently intended to avoid detection. While one might describe impulsive acts driven by high degrees of stress as *'mistakes'*, the prolonged use and attempted use of the resident's card does not meet that descriptor.

162 Even if the transactions which related to the student debts and Board registration were driven by stress or family pressure to please, they indicated Ms Abdulkadir failed to absorb the ethical responsibilities she carried as a nurse and which she had been taught shortly before. As noted earlier, the attempted transactions which were the subject of one of the proven charges were for personal items and made well after Ms Abdulkadir first obtained the card details – she had time to reflect and consider her actions but proceeded anyway.

163 In *Kumar*, the Tribunal explained the rationale for imposing a prohibition order and we consider it most apt here. The Tribunal concluded that without the order, the practitioner in that case could work as a PCA in residential aged care or in home-based services to the elderly or people with disabilities. PCAs work closely with residents or clients, and are often alone with them and, as the Tribunal noted, it is no less important they be ethical and trustworthy in undertaking that work.[26]

164 We have no wish for Ms Abdulkadir to face greater challenges at present, including in being able to earn an income to support herself. We wish her well in re-establishing her family and community relationships. However, notwithstanding her own declarations of change (and it appears the support of friends and community members), on the material before us we are not confident she ought to be engaged in work with vulnerable people, whether as a PCA or in a similar role. That is because we retain concerns about Ms Abdulkadir's honesty and capacity to, consistent with the Code provisions referred to in Allegation 1 above, demonstrate the lawful and ethical conduct in her personal life that is consistent with the profession's good reputation and standing in the eyes of the public.

165 We are satisfied a prohibition order will meet the purposes of determinations under the National Law.

166 It will protect the public and bring home to Ms Abdulkadir that her conduct as described in the Allegations is not acceptable to the profession and the wider community. We also consider it will assist to maintain proper ethical and professional standards and maintain the stature and integrity of the profession in the eyes of the public. It will serve as a warning to other practitioners that criminal activity and a failure to comply with obligations under the National Law may bring very serious consequences.

26 See paragraphs 99 to 104.

167 For those reasons, we have determined a prohibition order is to be made.

THE TERMS OF THE PROHIBITION ORDER

168 The definition of *'health services'* in the National Law is as follows:

(a) services provided by registered health practitioners;

(b) hospital services;

(c) mental health services;

(d) pharmaceutical services;

(e) ambulance services;

(f) community health services;

(g) health education services;

(h) welfare services necessary to implement any services referred to in paragraphs (a) to (g);

(i) services provided by dietitians, masseurs, naturopaths, social workers, speech pathologists, audiologists or audiometrists;

(j) pathology services.

169 The Board has sought an order that, as we understand it, is particularly directed at items (a), (b), (f) and (h) above.

170 As the definition covers services provided by registered health practitioners, we do not consider it necessary to specify services provided by registered or enrolled nurses in the order. We accept it would be appropriate for the purposes of clarity that the order make express reference to the work of a PCA and to describe the areas of work in which the prohibition is to operate. Accordingly, our order provides that Ms Abdulkadir is prohibited from:

> providing, whether as employee, contractor, manager or volunteer, any health service (including, but not limited to health services as a Personal Care Attendant) involving provision of care to persons in residential aged care, or receiving home or community based aged care or disability care.

THE PERIOD OF THE PROHIBITION ORDER

171 In her 9 December 2020 letter to the Tribunal, Ms Abdulkadir was critical of the time the Board's investigation has taken and delay in this proceeding. It is undeniable that these processes have taken some time, lengthened by the criminal process and then the COVID-19 pandemic. However, the proceeding at the Tribunal has also had an extended life because of the efforts made to contact Ms Abdulkadir, encourage her to participate and ensure she has full notice of the case against her. The materials show that Ms Abdulkadir has held the Board's solicitor's contact details at all times and as at August 2019 she had received the Board's documents and read them. While not obliged to do so, there would have been less delay had Ms

Abdulkadir notified the Board's solicitors or the Tribunal about her change of email and home address at an earlier time.

172 In its submissions on determinations, the Board referred us to a number of cases as a basis for seeking a period of two years.

173 In *Nursing and Midwifery Board of Australia v Morley*,[27] the respondent was an enrolled nurse and in 2012 took the credit card details of one of her patients. She used them to pay debts and purchase a shopping voucher (totalling more than $1,000.00). She had also previously been convicted of Centrelink fraud in 2008 and had failed to make notification of the charges or conviction. She also made false and misleading statements during her registration renewal application over four years when she failed to declare her conviction. The conduct was characterised as professional misconduct. The Tribunal imposed a reprimand; cancelled and disqualified the respondent from practice for three years and two months (noting that she had already been out of practice one year and 10 months) and also made a prohibition order.

174 In *Nursing and Midwifery Board of Australia v Nguyen*,[28] Mr Nguyen had he obtained credit card details of a patient and used them to obtain $40,480.44 between 1 June 2009 and 31 January 2013; been convicted of same; and failed to notify the Board of this and another theft and deception charge. The Tribunal noted the allegations were of a serious nature and required a disposition which satisfied the requirements of personal and general deterrence, protection of the public and protection of the reputation of the profession. Mr Nguyen's registration was cancelled and he was disqualified for a period of three years (in addition to the three and a half years he had already been suspended).

175 In *Nursing and Midwifery Board of Australia v Sotingco*,[29] Ms Sotingco had obtained the credit card details of an elderly patient in the nursing home where she worked when the patient's handbag was left at the nurse's station for over a week. She used it to buy online cologne, toiletries and beauty products to the value of $443 and attempted to purchase clothes to the sum of $1,521. She was charged and convicted of relevant offences. The Tribunal found Ms Sotingco engaged in professional misconduct. It reprimanded the respondent; suspended her for 6 months, (noting that she had been suspended for 18 months at that time); and, imposed a number of conditions on her. The Tribunal emphasised the betrayal of the profession and the community. It was noteworthy that Ms Sotingco: notified the board of her charges as required by the National Law; took proactive steps towards her rehabilitation, completing an Elder Abuse Prevention course, as well as a seminar on Law and Ethics for Registered and Enrolled Nurses;

27[2014] SAHPT 17.
28[2016] VCAT 2143.
29[2018] VCAT 1615.

and she attended on a psychologist in order to prepare a psychological report for court. The psychologist found that she was unlikely to reoffend.

176 In *Nursing and Midwifery Board of Australia v Underwood*, a very recent case, the Tribunal considered a sole allegation of misappropriation of funds in circumstances where the nurse has obtained around $25,700.00 through her role as practice manager. The Tribunal was satisfied that a period out of the profession was an appropriate outcome and, after considering other cases, including *Morley*, concluded that the starting point ought to be two years. Like in *Sotingco*, there were mitigating factors which led the Tribunal to conclude that, the 17 months Ms Underwood had been out of the profession and unregistered ought to be taken into account. An order was made that she be prohibited from applying for re-registration for around another seven months, to take the total to two years. In Ms Underwood's case, the Tribunal gave weight to her evidence she decided not to renew her registration as a form of punishment and other evidence about the treatment she had sought for the gambling addiction which contributed to her professional misconduct.

177 Although a number of those decisions concerned the period applied under a disqualification order, rather than a prohibition order, the purposes of the two kinds of orders are sufficiently related to allow the above cases to assist in determining an appropriate term for the prohibition order.

178 We acknowledge that Ms Abdulkadir has not worked in a health related role since around March 2017, notwithstanding the fact she was still registered until December 2017. As indicated by the decision in *Underwood* and *Sotingco*, it is often the case, that the time that has passed since the relevant conduct or events may have a mitigating effect. We do not consider that is an appropriate consideration in this case. Other than her own assertions, there is no real evidence of concrete steps Ms Abdulkadir has taken to reflect on her conduct and understand her shortcomings.

179 As our concerns about Ms Abdulkadir's candour and honesty remain current, we consider a prospective order is necessary and we are satisfied the appropriate period is two years. We believe that period of time will allow Ms Abdulkadir time to learn further from what has occurred, stabilise herself and be able to demonstrate the trustworthiness required to work in the relevant health services.

***OPEN COURTS ACT 2013* (VIC)**

180 At the time of making its referral to the Tribunal on 25 June 2019, the Board sought an order under the *Open Courts Act 2013* (Vic) (OCA) directed at protecting the privacy of the persons to whom allegations relate and any witnesses by prohibiting publication of identifying information. The Board again applied for that order at the hearing before us.

181 At the hearing before us and in her letter sent to the Tribunal on 28 October 2020, Ms Abdulkadir also applied for an OCA order suppressing her identity. She said:

> I understand that the public has every right to know of my mistakes so that if this information got released I would also be pressured and rejected amongst my community and that is why I wanted a suppression order so that I may avoid undue distress to my mental health that will be affected in future. I also have certain family members that have been physically abusive to me in the past and I'm afraid that upon these findings being released that I'd be subject to physical and emotional harm once again.

182 Section 4 of the OCA sets out the nature of the principle of open justice in the context of suppression orders. It says:

> (1) A court or tribunal is to have regard to the primacy of the principle of open justice and the free communication and disclosure of information in determining whether to make a suppression order.
>
> (2) A court or tribunal is only to make a suppression order if satisfied that the specific circumstances of a case make it necessary to override or displace the principle of open justice and the free communication and disclosure of information.

183 Relevantly, section 18 of the OCA contains the grounds on which suppression orders may be made:

> A court or tribunal other than the Coroners Court may make a proceeding suppression order if satisfied as to one or more of the following grounds —
>
> . . .
>
> (c) the order is necessary to protect the safety of any person;
>
> . . .
>
> (f) in the case of VCAT, the order is necessary—
>
> (i) . . .
>
> *(ii) for any other reason in the interests of justice.*

184 Section 14 requires that, when making an OCA suppression order, the Tribunal must be satisfied on the basis of evidence or sufficiently credible information that is satisfactory to it, that the grounds for establishing the order are established.

185 The following matters are relevant to the exercise of the discretion:[30]

> (d) The principal rule is that hearings should take place in open court: publicly and in open view, with no restriction on reporting. This is a fundamental precept underpinning the administration of justice;

30From *Medical Board of Australia v Handsjuk* [2019] VCAT 876; see *also Medical Board of Australia v FVE* [2018] VCAT 1029.

(e) In certain circumstances the administration of justice requires a qualification of the general rule. There will be circumstances where modifications of the general rule are necessarily made to ensure that the administration of justice is not frustrated. These exceptions are many and varied and cannot be prescriptively identified;

(f) The test to be applied by the Tribunal in making such orders includes considerations such as, whether the order is necessary in order not to prejudice the administration of justice; or whether it is necessary for the expeditious or fair hearing and determination of a proceeding or arguably for any other reason in the interests of justice;

(g) In determining whether to make a pseudonym /suppression order, the Tribunal is entitled to take into account the individual considerations affecting the person seeking the order and balance those against the principal rule of open justice in determining whether the administration of justice warrants the making of the order;

(h) Relevant to these individual considerations is whether there is a risk of a party or witness suffering psychological harm as a result of publication of his or her name or the names of other parties. Also relevant is the real risk of a party not proceeding with an action in the event that he or she or another person is identified;

(i) In determining whether to make such an order, the Tribunal is entitled to take into account the fact that there may still be reporting of the proceeding and the hearing itself will be conducted in open court, subject to the restrictions imposed by the pseudonym/suppression order;

(j) In determining whether it is necessary to make such an order, usually the proofs must be cogent and will not be satisfied by mere belief on the part of a party that the order is necessary. However, in certain cases a court can, in a practical sense, act on its own experience and draw appropriate inferences;

(k) Before making a suppression order, the Tribunal needs to be satisfied that the order is necessary, not merely convenient, reasonable or sensible;

(l) The applicant bears the onus to establish convincingly that the presumption of open justice and free communication of information should be qualified and a suppression order made; and

(m) It is not sufficient that a public hearing will create embarrassment for a respondent or their family, friends and associates.

THE BOARD'S APPLICATION FOR AN OCA ORDER

186 For the following reasons, we agreed it was appropriate for the order sought by the Board to be made.

187 After having regard to the primacy of the principle of open justice and the free communication and disclosure of information referred to in section 4(a) of the OCA, we were satisfied that the specific circumstances of this case made it necessary to override or displace the principle of open justice and the free communication and disclosure of information by making a proceeding suppression order under section 17 of the Act.

188 The order was made on the grounds that it is in the interests of justice given the material before us involved personal information about the resident, his family and the nature of the care he received at the Home. The material also contained details about Ms Abdulkadir's conduct provided by her then employer. The receipt of assistance from witnesses in these types of cases are an important mechanism by which the Board becomes aware of issues of concern that require investigation. Protecting the privacy of persons who make statements or provide information to the Board is essential if the Board is to ensure that professional conduct issues under the National Law are properly investigated when they arise. While evidence was not called at the hearing, the witness statements and other material has been relied on by us in making our decision and forms part of the evidence.

189 The purpose of the Tribunal's order is to avoid the unreasonable invasion of the privacy of the resident, his family and others identified in the materials and to ensure the Board can properly undertake its regulatory functions. The duration of the order has been determined on the basis the Tribunal is satisfied it is necessary in the interests of justice for the specified people's identities to be protected permanently. We were satisfied the order is necessary, not merely convenient, reasonable or sensible.

MS ABDULKADIR'S APPLICATION FOR AN OCA ORDER

190 We have refused to make the order sought by Ms Abdulkadir.

191 While we accept Ms Abdulkadir has been estranged from her family from time to time, there was no material before us to demonstrate her safety is at risk such that an order ought to be made. We also noted that in her evidence Ms Abdulkadir told us her sister had delivered materials to her in October 2020, she referred to a family holiday with her parents in late 2019 and she expressed a wish to move back home.

192 While Ms Abdulkadir made reference to past illness and said she was unwell on the hearing date, no medical certificates were provided. As a result, there was no material which indicated she was in any way impaired or that she would experience mental distress or harm by being identified in these Reasons over and above what is to be expected for any practitioner facing disciplinary action in the Tribunal.

193 We discussed the purposes of determinations under the National Law earlier. Part of the warning sent to the profession by publication of decisions of this kind is the knowledge it involves a public process.

194 We accept decisions such as these often have consequences for practitioner's relationships, work options and reputation more generally. As stated earlier, the fact of the public nature of the proceeding and the likelihood that the publication of our Reasons hearing will create embarrassment for Ms Abdulkadir or her family, friends or associates are not sufficient reasons to make the order sought.

195

A Dea **Senior Member and Presiding Member**	M Bylhouwer **Health Practitioner Member**	R Pearson **Health Practitioner Member**